

**JUDGE DANIELS**

Martin F. Casey  
**CASEY & BARNETT, LLC**  
65 West 36<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, New York 10018  
(212) 286-0225  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MUND & FESTER GMBH & CO. KG a/s/o  
GESTION DE EXPORTACIONES FRUTICOLAS  
S.A.,

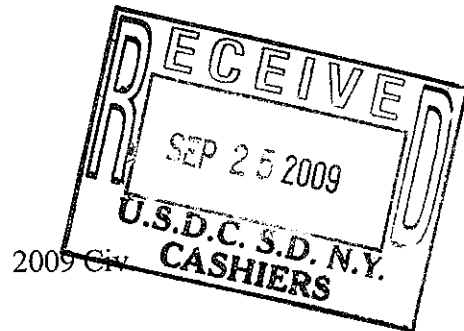
Plaintiff,

- against -

M/V PRINCE OF SOUNDS, her engines, boilers,  
furniture, tackle, apparel, etc., *in rem*; PACIFIC  
SEAWAYS S.A., SEATRADE GROUP N.V.  
CURACAO and SWORDFISH SHIPPING, INC.,  
*in personam*,

Defendants.  
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**'09 CIV 8177**



**COMPLAINT**

Plaintiff, MUND & FESTER GMBH & CO. KG a/s/o GESTION DE  
EXPORTACIONES FRUTICOLAS SA., by and through its attorneys, Casey & Barnett LLC, as  
and for its Complaint, alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the  
Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333.

2. At all material times, MUND & FESTER GMBH & CO. KG (hereinafter  
“M&F”) was and is a corporation organized and existing by virtue of the laws of a foreign state  
with an office and place of business located at Trostbrücke 1 20457 Hamburg, Germany and is

the subrogated underwriter of a consignment of grapes laden on board the M/V PRINCE OF SOUNDS, as more specifically described below.

3. At all material times, GESTION DE EXPORTACIONES FRUTICOLAS SA. (hereinafter "Gestion") was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at Panamericana Sur Nro. 5018, Kilometro 38, Linderos Buin, Chile and was the owner, consignee and/or assured of a consignment of grapes laden on board the M/V PRINCE OF SOUNDS, as more specifically described below.

4. At all material times, upon information and belief, defendant, PACIFIC SEAWAYS S.A. (hereinafter "Pacific Seaways"), was and is a foreign corporation with an office and place of business located in Monrovia, Liberia, who owns, operates, manages and/or charters ocean-going vessels, including the M/V PRINCE OF SOUNDS (hereinafter "vessel"), that operate between various foreign and domestic ports and, in particular, within this district and was the owner, owner *pro hac vice*, charterer, manager and/or operator of the M/V PRINCE OF SOUNDS, and at all relevant times, was and is doing business within the jurisdiction of this Honorable Court.

5. At all material times, upon information and belief, defendant, SEATRADE GROUP N.V. CURACAO (hereinafter "Seatrade"), was and is a foreign corporation with an office and place of business located at c/o Seatrade Groningen B.V., 200, Laan Corpus den Hoorn, Groningen, Netherlands, who owns, operates, manages and/or charters ocean-going vessels, including the M/V PRINCE OF SOUNDS (hereinafter "vessel"), that operate between various foreign and domestic ports and, in particular, within this district and was the owner,

owner *pro hac vice*, charterer, manager and/or operator of the M/V PRINCE OF SOUNDS, and at all relevant times, was and is doing business within the jurisdiction of this Honorable Court.

6. At all material times, upon information and belief, defendant, SWORDFISH SHIPPING, INC. (hereinafter "Swordfish"), was and is a foreign corporation with an office and place of business located at 38 South 3<sup>rd</sup> Street, Philadelphia, Pennsylvania 191067, c/o Terminal Shipping, who owns, operates, manages and/or charters ocean-going vessels, including the M/V PRINCE OF SOUNDS (hereinafter "vessel"), that operate between various foreign and domestic ports and, in particular, within this district and was the owner, owner *pro hac vice*, charterer, manager and/or operator of the M/V PRINCE OF SOUNDS, and at all relevant times, was and is doing business within the jurisdiction of this Honorable Court.

7. At all material times, the M/V PRINCE OF SOUNDS was and is an oceangoing refrigerated cargo vessel built in 1993, that is flagged in the Liberia, has the call sign A8OE6, which engages in the common carriage of merchandise by water for hire between various foreign and domestic ports and which is now, or will be during the pendency of this action, within the jurisdiction of this Honorable Court.

8. Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

#### **RELEVANT FACTS**

9. On or about March 10, 2009, a consignment, consisting of 15,558 cartons of grapes, then being in good order and condition, was delivered to the M/V PRINCE OF SOUNDS and the *in personam* defendants and/or their agents at the port of Valparaiso, Chile for transportation to Sheerness, United Kingdom in consideration of an agreed upon freight,

pursuant to Swordfish bill of lading number SWEU0916SHSVP001 dated March 10, 2009 and Swordfish bill of lading number SWEU0916SHSVP002 dated March 10, 2009.

10. Thereafter, the aforementioned consignment was loaded aboard the M/V PRINCE OF SOUNDS and the vessel sailed for its intended destination.

11. Upon discharge, it was discovered that the consignment was not in the same good order and condition as when received by the defendants, but instead, had suffered damages during transit as a result of exposure to higher than optimum temperatures during transit.

12. As a result of the damages sustained to the shipment, Gestion sustained a loss.

13. The damage to the cargo was not the result of any act or omission of the plaintiff but, to the contrary, was due solely as the result of the negligence, fault, neglect, breach of contract of carriage, and bailment on the part of the defendants.

14. At all times relevant hereto, a contract of insurance for property damage was in effect between Gestion and M&F, which provided coverage for, among other things, loss or damage to the consignment.

15. Pursuant to the aforementioned contract of insurance between Gestion and M&F, monies have been expended on behalf of Gestion to the detriment of M&F due to the damages sustained during transit.

16. As M&F has sustained damages as a result of said expenditures, expenditures rightly the responsibility of the defendants, M&F has an equitable right of subrogation and is subrogated, to the extent of its expenditures, to the rights of its insured with respect to any and all claims for damages against the defendants.

17. By reason of the foregoing, plaintiff has been sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, which are presently estimated to be no less than \$90,195.02.

**WHEREFORE**, Plaintiff prays:

1. In rem service of process be issued against the M/V PRINCE OF SOUNDS, her engines, boilers, tackle, furniture, apparel, etc.; that the vessel be seized and that all those claiming an interest in her be cited to appear and answer under oath both all and singular the matters aforesaid;

2. The M/V PRINCE OF SOUNDS her engines, boilers, tackle, furniture, apparel, etc., be condemned and sold to satisfy the judgments herein in favor of plaintiff;

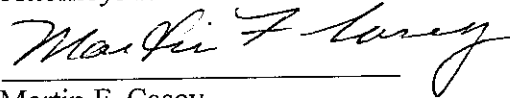
3. That if the defendants cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk to issue Process of Maritime Attachment and Garnishment to secure plaintiffs' claims;

4. The Court order, adjudge and decree that defendants PACIFIC SEAWAYS S.A., SEATRADE GROUP N.V. CURACAO, SWORDFISH SHIPPING, INC., and the M/V PRINCE OF SOUNDS be found joint and severally liable and pay to plaintiff the losses sustained herein, together with pre-judgment and post judgment interest thereon and their costs; and;

5. That this Court grant to plaintiff such other and further relief as may be just and proper.

Dated: New York, New York  
September 24, 2009  
292-08

CASEY & BARNETT, LLC  
Attorneys for Plaintiff

By:   
Martin F. Casey  
65 West 36<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, New York 10018  
(212) 286-0225